

REMARKS

Applicant requests the Examiner to reconsider and withdraw the objection to claims 1-9 in view of the above corrective claim amendments which conform to the Examiner's instructions.

Applicant also respectfully **traverses** the rejection of claims 1-9 under 35 U.S.C. § 102(b) as being anticipated by Focke '811.

First, Applicant would like to summarize the advantages and features of Applicant's invention relative to the prior art upon which the invention is an improvement.

Applicant's claimed invention provides, for the first time, active means and steps for limiting the performance of production and packaging installations for cigarettes. Such performance limitations are intended to allow manufacturers of such installations to set the performance limit of a specific kind of installation to a value below its maximum performance level.

Manufacturers generally construct their installations for the production and/or packaging of cigarettes in such a manner that the installations are capable of the greatest possible performance that can be technically realized at the time of their development. However, some customers, because of a variety of reasons, do not require the greatest possible technical performance. They, therefore, order installations of lower performance but naturally at a correspondingly lower price.

Prior to the invention, this situation forced manufacturers to engineer and produce for such customers special installations whose maximum performance level was below that of the

greatest performance level technically possible. For obvious reasons, this practice proved to be very complicated and cost-intensive.

At this point Applicant's invention comes into play. According to the claimed invention, the performance level of an installation that can be retrieved by a customer can be limited to a value below the maximum level that is technically possible. In order to scale the level of production or packaging performance that can be retrieved by the installation, the invention provides a performance-monitoring device with a performance-detecting device, a performance-specifying device, a comparator and a **performance**-limiting device. The performance-specifying device generates a performance-related target value based on a performance level guaranteed to the purchaser, i.e., the operator of the installation. The **performance**-limiting device ensures that an activating signal is generated when the target value is exceeded, with the result that the **performance**-limiting device lowers the performance of individual production units or all production units. The actual performance of the installation is therefore limited to the performance level paid by, or guaranteed to, the customer.

The claimed invention provides the advantage of producing a defined type of installation capable of achieving the maximum performance technically possible which can then be supplied to customers with a variety of individually retrievable performance levels and at correspondingly adjusted prices. With this solution, it is no longer necessary to engineer and manufacture an additional custom-designed type of installation which has a maximum performance level below that of what is technically possible.

The term "performance" with respect to an installation is naturally defined as a characteristic value consistently expressed in terms of a certain **time frame** or **time unit**. For a packaging and production installation, the term "performance of the installation" often refers to the number of cigarette packs produced **per time unit**. Furthermore, the performance of a particular production unit of the installation can be defined, for example, as the number of rotations **per time unit**, namely the revolution speed of a central drive in the production unit. In any case, it is clear to a prior art expert that performance designates a characteristic value, such as the number of cigarette packs produced in a particular **time unit**.

For example, in the field of computer technology the performance of a processor is defined as the number of commands that can be processed by the CPU **per time unit** (clock speed).

The rejection of claims 1-9 based on alleged anticipation by Focke '811 requires that Focke disclose, either expressly or inherently, each limitation of each of claims 1-9, or in other words, that each of claims 1-9 be readable on Focke's disclosure. Applicant respectfully submits that clearly such is **not** the case here.

More specifically, Focke '811 shares a common inventor (Mr. Focke) with the inventors of, and is assigned to the same assignee as, the present application. Applicant respectfully submits that Focke '811 does not anticipate the claimed invention in any manner. In contrast to the present invention, in particular in contrast to Applicant's independent claims 1 and 5, this reference fails to disclose, or even suggest, the claimed "**performance-limiting device**".

Focke '811 discloses a process for controlling a production and packaging system which, depending on a final quantity to be produced, calculates the quantity of material which must be supplied to the individual production units of the production and packaging system. Among other things, this process takes into account the anticipated defective production level, as well as defective production which actually occurs.

It is **important** to note that the individual production units referred to in this reference are exclusively allocated in terms of **specified quantities**. However, these specified quantities are in **no way related to performance** specifications, i.e., they do **not** influence the **actual performance** of the installation in any manner! The performance of the installation in Focke is constant in each respective case. (Although not specifically mentioned in Focke '811, the performance of the installation corresponds to the greatest maximum performance technically possible at the time of its development.)

For example, Focke, in the cited columns 6 and 7, lines 57- 67 and 1-12, respectively, describes that a shutdown process for the entire production and packaging system is initiated when the actual produced quantity reaches a certain pre-specified desired quantity. However, a specification of a desired quantity, which, when achieved, results in a shutdown of the installation, is not a **performance** specification! The performance of the machine is in no way limited by the quantity specification. This is because the number of products produced per **time unit**, which is one measure of performance, remains the same within the framework of Focke '811, regardless of how high the specified quantity or desired quantity is set for initiating shutdown of the installation when achieved. The number of products corresponding to the

specified quantity is produced at an established and greatest performance level of the installation that is technically possible. Thus, within the framework of Focke '811, the installation performance **is unlimited**.

If, for example, the production quantity, i.e., the number of products to be produced no matter what time period is involved, specified for the installation in Focke is very large, the installation, operating at the specified and constant performance level, will require a certain period of time to produce the specified quantity of products. If, on the other hand, the specified quantity is correspondingly smaller, the installation will naturally require less time. However, the **performance** of the installation within the framework of Focke **is identical** in both cases, and is **not limited** by the performance-monitoring required by claims 1 and 5.

At **no** point in the entire Focke reference is any mention made of **performance** specifications in addition to, or as an alternative to, quantity specifications. **In contrast**, the present invention limits the performance of the installation by means of the performance-monitoring device, for example in that the rotational speed of the different drives of the production units are each prevented from exceeding a certain maximum rotational speed.

Since the claimed "invention", on one hand, and the teaching of Focke '811, on the other hand, involve significantly different concepts, the claimed invention is neither anticipated nor suggested in any manner.

Thus, since Focke '811 does not disclose, either expressly or inherently, each limitation of each of claims 1-9, or in other words, since none of claims 1-9 (especially independent claims 1 and 5) is readable on Focke's disclosure, Applicant respectfully requests the Examiner to

AMENDMENT UNDER 37 C.F.R. § 1.111
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reconsider and withdraw the rejection under 35 U.S.C. § 102(b), and to find the application to be in condition for allowance with **claims 1-9**; however, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.

Filed concurrently herewith is a Petition (with fee) for an Extension of Time of two months. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

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